

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/603,235 Confirmation No. 5606
5 Applicant : James A. Lesch, Jr.
Filed : June 24, 2003
TC/A.U. : 3752
Examiner : Patrick F. Brinson

10 Docket No. : NWK1581
Customer No. : 30245

15 Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

20 **Petition under 37 CFR 1.137(b)**

Assistant Commissioner for Patents
Box Petitions
25 P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

30 Applicant's counsel again states that the abandonment of this application was unintentional due to the non-receipt of the Notice of Allowance dated September 28, 2005. A petition stating that the abandonment was unavoidable was originally filed in 2006, and was continued through May

of this year. Counsel was incapacitated by an injury for the past few months, and now files this petition on the basis of unintentional abandonment.

1. Application was filed by Customer Number

- 5 The Office has noted that in both the declaration and the transmittal letter submitted on filing the application, practitioner specified Customer Number 30245. However, the Office is incorrect in its assertion that the Office properly selected the Customer Number at the time of filing. Rather, the Office improperly entered the practitioner's address at the time of filing, despite both 37 CFR 1.33(a) and the clear indication, by check box,
- 10 that the Customer Number be selected by OIPE. Unfortunately, such a selection contrary to both clear selection by a practitioner and 37 CFR 1.33(a) is not an uncommon experience. To wit, this practitioner has had to file several other petitions on the same basis. A review has spotted sixteen additional files that counsel filed that are not linked to counsel's customer number and are inaccessible to counsel via PAIR, namely:

15 **TABLE 1: Applications not yet linked to Practitioner Customer Number
despite provision of Customer Number at time of filing**

Docket	Surname	Invention	FILED	Approximate serial # range
DCO2116	Woods Jr	ladder lash device, kit and method	8/21/2002	10/226,000 - 036
VCR1133	Martens	forced cell phone call disruption device	10/18/2002	10/273,550 - 274,500
SEB256	Webster	illuminated message display	11/27/2002	10/306,422 or 433-469
BLT1351	Bannerman	bookcase	1/14/2003	10/342,452 or '458, '459, '469
GSO989	Jones	safety harness, kit and method	3/20/2003	10/392,720 or w/in 170#s
OCI765	Simpson	tray for above-ground pools	5/15/2003	10/439,783 - 441,350
CMB731	Crabtree	electric vehicle energy regenerating mechanism	5/15/2003	10/439,783 - 441,350
WGH2354	Lingafelt	battery powered cautery device	6/5/2003	10/455,894 - 902
MEM329	Cook	fuel dispensing nozzle support structure	8/15/2003	10/641,713 - 10/641,839
CIL1886	Hubbell	foot station	8/29/2003	10/651,701 - 739
WGH2326	Kaczmarek	wheeled cargo tray	9/15/2003	10/661,059 or '076-086
KCM453	Kerner	body wash composition	9/15/2003	10/661,059 or '076-086
TOR6572	Whitmore	portable worktable	10/23/2003	10/692,559 - 630
BGN990	Simons	flotation toy device, kit, and method	12/9/2003	10/731,577
LIN764	Ganz	bird-proofing device and kit	12/9/2003	10/731,586
FLO433	Causey	electric mole trap	5/7/2004	10/841,324 - 359

The approximate serial number is based upon applications filed simultaneously with the missing applications, and the actual number may be outside the range provided.

All of the above applications were filed using a customer number, but none are visible to

- 5 the counsel in private PAIR. Despite several requests to reinstate the above-list of applications, the Office has not reinstated any of the cases. In perhaps the most egregious example of the Office not following either 37 CFR 1.33(a) or the preference clearly indicated by a selected check box, an Examiner called practitioner concerning abandonment for a particular application stating serial number, now believed to be
- 10 10/731,586, but could not offer a docket number (this was prior to the construction of the above-table, and practitioner is not able to access these cases by PAIR). When practitioner requested use of the Customer Number, which was not associated with the case, the Examiner confirmed that the Customer Number was on the filing sheet, but stated that the sheet clearly offers the word “OR” between the Customer Number and the
- 15 Correspondence Address, asserting that the PTO could make its own selection. Practitioner remains baffled why a check boxes are used on the form in that case, and further notes use of the address over a Customer Number is contrary to 37 CFR 1.33(a). Practitioner requests that all of the above-listed cases be reinstated by this petition.

20 **2. Date of Update: June 14, 2006; June 24, 2003 or July 7, 2003**

Again, the Office has already noted that in both the declaration and the transmittal letter submitted on filing the application, the practitioner specified Customer Number 30245.

- 25 The application was filed on June 24, 2003 using that number. Counsel for petitioner asserts that the Customer Number was not linked to the application at that time, but was linked to the file on June 14, 2006, when practitioner was encouraged to file yet another address update in order to ensure this application was linked to his Customer Number so practitioner could access the case in PAIR. This additional request date is being used against practitioner, as it is being asserted by the Office as the date which the Customer Number was updated, rather than the date on which a Customer Number, rather than a

correspondence address, was used for the application. Practitioner asserts that (1) it was requested that the Customer Number be linked to the application at the time of filing, namely June 24, 2003; and (2) the practitioner address associated with the Customer Number was updated around the date of July 7, 2003. Alternatively, it could also be the 5 case that another problem caused this particular case, as well as the other cases enumerated above, not to be updated in a timely manner when originally requested by the practitioner.

3. Documentary Evidence

- 10 Unfortunately, because of a crashed hard drive and other computer updates, counsel for petitioner is not able to provide a copy of the address change request; however, counsel requests that the Office not dismiss petitioner for lack of this particular form, but rather consider other correspondence mailed by the Office to the counsel for petitioner prior to the date of the Notice of Allowance for this application. Counsel for petitioner provides 15 documentary evidence that the date of the address update was approximately July 7, 2003 by referencing the following Notices of Allowance which are readily available to the Office, and prays and pleads that the Office examine and consider its own records on this issue. If the Office would prefer that the practitioner provide his own copies of these Notices of Allowance, counsel for petitioner will happily oblige.
- 20 On 7/3/2003 (prior to the date counsel for petitioner asserts updating his Customer Number), a Notice of Allowance was sent on the following file to the former Dallas address of the counsel for petitioner: U.S. Pat. App. 10/273,671 for BACK SCRUBBER. The Office can confirm that all Notices of Allowance sent to the counsel for petitioner's Customer Number prior to that date were sent to the correspondence address of 6721 25 Northridge Dr, Dallas TX 75214.

After 7/7/2003, the following Notices of Allowance were sent to the counsel for petitioner's updated Customer Address of PO Box 160370, Austin TX 78716:

Pat. App. #	Title of Invention
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10/369,481 PORTABLE THERMOELECTRIC COOLING AND HEATING
APPLIANCE DEVICE AND METHOD OF USING

29/156,906 PIN ASSEMBLY FOR TOWELS, SHEETS AND THE LIKE

29/176,213 DISPENSOR FOR SOCKS AND THE LIKE

5 The above Notices of Allowance were mailed in July, 2003. After July 2003, but still during the calendar year of 2003, the following Notices of Allowance were also mailed to the counsel for petitioner's updated Customer Address of PO Box 160370, Austin TX 78716:

Pat. App. # **Title of Invention**

10 10/234,909 MOLDED MAGNETIC COMPONENTS FOR USE IN AQUATIC
ENVIRONMENTS

10/193,851 REUSABLE ROOF ANCHOR FOR SAFETY LINES

10/137.241 MULTIPURPOSE DRYWALL TOOL

10/137,270 PHOSPHORESCENT PAVING BLOCK

15 10/285,607 BENCH SLIDE MOUNT

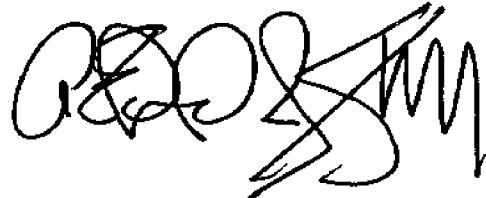
10/441,305 REMOTE CONTROLLABLE TOY DEVICE AND METHOD OF
USING

10/234,909 MOLDED MAGNETIC COMPONENTS FOR USE IN AQUATIC ENVIRONMENTS

Counsel for petitioner also encourages the Office to review other Notices of Allowance mailed to Customer Number 30245 during the last two quarters of 2003, the calendar year 2004, the calendar year 2005, and the first quarter of 2006.

- 5 In conclusion, counsel for petitioner respectfully requests that the patent be issued and that the other applications enumerated in Table 1 on page 2 of this document be reinstated.

Respectfully submitted,



10 Anthony Edw. J Campbell
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Customer No. 30,245
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Attorney for Applicant

15 Date: September 28, 2009

Certificate of Facsimile

I hereby certify that this correspondence is being transmitted by fax to the United States Patent and Trademark Office, Fax No. 571-273-8300 on the date shown below.

20 Anthony Edw. J Campbell



25 Monday, September 28, 2009